

**PART 871—STANDARD OPTIONAL LIFE INSURANCE**

13. The authority citation for part 871 continues to read as follows:

**Authority:** 5 U.S.C. 8716.

14. In § 871.501, paragraph (a) is revised to read as follows:

**§ 871.501 Termination and conversion of insurance.**

(a) The standard optional insurance of an insured person stops when his/her basic insurance stops as provided in § 870.501 of this chapter, subject to a 31-day extension of standard optional life insurance coverage, except when the basic insurance stops due to a full Living Benefits election, in which case the standard optional insurance will continue unless voluntarily cancelled by the insured.

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**PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE**

15. The authority citation for part 872 continues to read as follows:

**Authority:** 5 U.S.C. 8716.

16. In § 872.501, paragraph (a) is revised to read as follows:

**§ 872.501 Termination and conversion of insurance.**

(a) The additional optional insurance of an insured person stops when his/her basic insurance stops as provided in § 870.501 of this chapter, subject to a 31-day extension of additional optional insurance coverage, except when the basic insurance stops due to a full Living Benefits election, in which case the additional optional insurance will continue unless voluntarily cancelled by the insured.

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**PART 873—FAMILY OPTIONAL LIFE INSURANCE**

17. The authority citation for part 873 continues to read as follows:

**Authority:** 5 U.S.C. 8716.

18. In § 873.501, paragraph (a) is revised to read as follows:

**§ 873.501 Termination and conversion of insurance.**

(a) The family optional insurance of an insured person stops when his/her basic insurance stops as provided in § 870.501 of this chapter, subject to a 31-day extension of family optional insurance coverage, except when the basic insurance stops due to a full Living Benefits election, in which case the family optional insurance will

continue unless voluntarily cancelled by the insured.

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**PART 874—ASSIGNMENT OF LIFE INSURANCE**

19. The authority citation for part 874 continues to read as follows:

**Authority:** 5 U.S.C. 8716.

20. In § 874.201, paragraph (g) is added to read as follows:

**§ 874.201 Assignments permitted.**

\* \* \* \* \*

(g) An insured individual who has elected a Living Benefit may not assign his/her insurance and an insured individual who has assigned his/her insurance may not elect a Living Benefit.

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**DEPARTMENT OF AGRICULTURE****Federal Crop Insurance Corporation****7 CFR Part 457**

RIN 0563-AA96

**Common Crop Insurance Regulations; Nursery Crop Insurance Provisions**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations for specific crop provisions to insure nursery plants. These provisions will supplement the Common Crop Insurance Policy Basic Provisions which contains standard terms and conditions common to most crops. The intended effect of this rule is to move specific crop provisions for insuring nursery from the Nursery Crop Insurance Regulations (7 CFR part 406) to the Common Crop Insurance Policy (§ 457.8) for ease of use by the public and conformance among policy terms, and to add a nursery frost, freeze, and cold damage exclusion option to better meet the needs of the insured.

**EFFECTIVE DATE:** June 15, 1995.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and

Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 2000.

This rule has been determined to be "not significant" for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget ("OMB").

The information collection or record-keeping requirements contained in these regulations (7 CFR part 457) were submitted to OMB in accordance with the provisions of 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 0563-0050.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. This action reduces the paperwork burden on the insured and the reinsured company. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections (2)(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J or promulgated by the National Appeals Division, whichever is applicable, must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an

Environmental Assessment nor an Environmental Impact Statement is needed.

By separate rule, FCIC will amend 7 CFR part 406 to restrict the crop years of application to those prior to the crop year for which this rule will be effective. FCIC will terminate the provisions of the present policy at the end of the crop year and later remove that part.

On Friday, January 27, 1995, FCIC published a notice of proposed rulemaking in the **Federal Register** at 60 FR 5339 proposing to revise the Common Crop Insurance Regulations by adding new provisions for nursery crop insurance.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. The comments received and FCIC responses are as follows:

*Comment:* One comment received from an insurance company disagreed with using the insured's wholesale price list in determining the insurance coverage rather than using the projected market price because:

(1) The proposed rule ties price levels (i.e., "monthly market value") to growers' wholesale price lists, while the Federal Crop Insurance Reform Act of 1994 (Act) ties price levels to projected market prices. Wholesale price lists represent offers; however, market prices represent offers and acceptance. It was questioned whether FCIC had the authority to determine that wholesale price lists are the "projected market prices" when: (a) FCIC has never seen and never validated such price lists; (b) they are not the product of independent economic forces or analysis; and (c) they are the estimates of insureds who have an economic interest in inflating the prices on their wholesale price lists. The company believes that allowing each grower to define his or her own market price by quoting an offering price invites fraud; and

(2) The Act requires FCIC, not individual growers, to determine "projected market price". The company acknowledged that FCIC has the authority to determine that a grower's wholesale price list is the "projected market price" but questions whether this is a lawful exercise of that authority. It was recommended that FCIC base the price level for nursery crops on the actual market price at the time of harvest (as determined by the Corporation).

*Response:* FCIC believes using the growers' wholesale price lists to establish the projected market prices does not violate the Act because the Act authorizes the Corporation to determine the wholesale market price as the

projected market price. Due to numerous varieties of nursery plants eligible for insurance, FCIC believes that it is impractical to establish a price for each insured plant in the various states prior to the crop year. FCIC will determine whether the wholesale market price of the plant is reasonable before accepting it as the projected market price. The Federal Crop Insurance Corporation will investigate options on how nursery prices should be established for the 1997 crop year. Therefore, FCIC does not believe that it is necessary to change these provisions at this time.

*Comment:* One comment received from an insurance company disagreed with the elimination of the 10 percent reduced valuation in subsection 1.(a) (definition of "Amount of insurance"). The company stated that the 10 percent value reduction must remain in the policy to account for salvage valuation because many damaged plants can be restored to marketability or the Standard Reinsurance Agreement should be amended to reimburse insurance companies for this change. A concern was raised that deletion of the 10 percent reduction would result in increased premiums to insureds.

*Response:* The 10 percent reduction was originally incorporated to eliminate costs for packing, shipping, sales commissions and other expenses that would not be incurred due to the loss. The proposal to eliminate this 10 percent reduction was made to offset the expense of disposing of the destroyed inventory. However, eliminating the 10 percent factor would increase premium by 10% to cover the additional liability. No data is available at this time to determine if the costs of inventory disposal approximates the amount of 10%. Therefore, FCIC agrees that the 10 percent reduced valuation should remain in the nursery provisions and has amended the provisions accordingly.

*Comment:* One comment received from an insurance company requested the term "Annual loss deductible" contained in subsection 1.(b) be changed to "Crop year loss deductible".

*Response:* FCIC agrees with the comment and has adopted this change.

*Comment:* One comment received from an insurance company suggested that the word "unit" be removed from the definition of "Field market value A" in subsection 1.(e) and from the definition of "Field market value B" in subsection 1.(f) because it is redundant and invites the unintended interpretation that field market value A and field market value B include both insured and uninsured plants.

*Response:* FCIC agrees with this comment. FCIC has added "insurable plants" or "insured plants" to the term to clarify these provisions.

*Comment:* One comment received from an insurance company suggested the definition of "Standard nursery containers" contained in subsection 1.(n) be changed to read as follows: "Rigid containers not less than three (3) inches across the smallest dimension which are commercially sold to nurseries, and for the plant contained, are appropriate in size with the proper drainage holes and used in conjunction with an appropriate growing medium". Justification for this change was that too often growers permit plants to become root bound or use containers with drainage holes that are too high or too low for the plant or use an inappropriate growing medium. The company stated that FCIC should make clear that insurance does not attach unless all of these conditions are satisfied.

*Response:* FCIC agrees with the comment and has modified the provisions with language similar to that recommended.

*Comment:* One comment received from a national trade organization for the nursery industry strongly disagreed with the proposed definition of "Standard Nursery Containers" which excludes trays and cell packs. This organization stated that trays and cell packs are indeed standard containers for a large segment of the nursery industry and that many trays, flats, and cell packs are larger than three inches across the smallest dimension. FCIC was urged to reconsider the proposed definition to explicitly incorporate flats, trays, and cell packs.

*Response:* FCIC disagrees with this comment. These types of containers are not insurable under the nursery policy. The nursery policy is based on plants grown in standard nursery containers not less than three (3) inches across the largest dimension at the top of the container. FCIC will study the feasibility of insuring nursery plants grown in other types of containers for the 1997 crop year. Therefore, FCIC does not believe that it is necessary to amend these provisions at this time.

*Comment:* One comment received from an insurance company suggested that subsection 6.(d) be amended to specify that insurers have no duty or contractual obligation to consent to a revision of the nursery plant inventory summary. The company also recommended that paragraphs 6.(d)(1) and 6.(d)(2) be deleted. The company stated that an inspection should be made before insurance attaches on any proposed increase in inventory and that

because an insurer has no duty to accept a proposed increase, it should have no duty to inspect it. The company stated that the policy should state that a refusal to inspect constitutes a refusal to accept a proposed increase.

*Response:* FCIC disagrees with the comment. The proposed provisions do not require an insurer to make an inspection in some cases. However, an inspection is necessary for insurance to attach if the conditions of paragraphs 6(f)(1) and 6(f)(2) apply. FCIC believes removing paragraphs 6(f)(1) and 6(f)(2) would require the insured to request an inspection for any inventory increase. Therefore, FCIC does not believe that it is necessary to amend these provisions.

*Comment:* One comment received from an insurance company stated that the proposed nursery regulations do not contain provisions for the inclusion of an amount for operating and administrative expenses in the calculation of premium and, therefore, are in violation of the Federal Crop Insurance Corporation Reform Act of 1994.

*Response:* FCIC disagrees with this comment. All information concerning subsidies, including the producer premium subsidy and administrative expenses, is contained in the actuarial table. Therefore, FCIC does not believe that it is necessary to amend these provisions.

*Comment:* One comment received from an FCIC Regional Service Office suggested that subsection 8.(a), paragraph (4) be amended to read as follows: "Are grown in standard nursery containers (not planted in the ground), at least three (3) inches across the smallest dimension unless provided for on the actuarial table." Justification for this change was that many requests to insure trays or "flatted stock" containers with multiple plantings have been received. To alleviate the time and personnel needed to process the number of written agreements, the actuarial table could authorize such coverage.

*Response:* FCIC disagrees with this comment. The nursery policy does not allow insuring trays or "flatted stock" containers with multiple plantings. Only plants grown in standard nursery containers that are at least three (3) inches across the largest dimension at the top of the container are insurable. FCIC will study the feasibility of providing insurance coverage for nursery plants not grown in standard nursery containers for the 1997 crop year. Therefore, FCIC has amended the proposed provisions to delete the availability of written agreements for such plants.

*Comment:* One comment from a national trade organization for the nursery industry expressed concern that as many of 5,000 or more plant species are commercially produced by nursery growers, yet the Nursery Eligible Plant Listing for the 1994 crop year contained only 494 species. The organization urged FCIC to expand the Nursery Eligible Plant Listing as soon as possible and stated that until the listing is more inclusive, the nursery program will remain unattractive to a sizable segment of the industry.

*Response:* The Nursery Eligible Plant Listing was amended for the 1995 crop year and will be amended for the 1996 crop year to include additional plant species. FCIC is continuing to work with nursery experts to evaluate additional plant species that may be added to this listing.

*Comment:* One comment was received from an insurance company regarding paragraphs 10.(a) (3) and (4) which specify that insects and plant disease are insured causes of loss. The company stated that: (a) the only insect and plant disease that should be insured against are those determined by a state department of agriculture or an accredited agriculture college in the state to be an unprecedented affliction in that state to that plant and for which no effective control is available, because most insect and plant-disease losses are the result of poor nursery practices; and (b) paragraphs 10.(a) (3) and (4) should make it clear that policyholders have an obligation to keep all receipts for purchases of sprays and maintain spraying records.

*Response:* FCIC disagrees with the comment. The crop provisions already exclude damage due to insufficient or improper application of pest and disease control measures. The Common Crop Insurance Policy Basic Provisions, to which the Nursery Crop Provisions attach, exclude losses due to failure to follow recognized good practices, and also require policyholders to maintain records. Therefore, FCIC does not believe that it is necessary to amend these provisions.

*Comment:* One comment received from an insurance company disagreed with providing coverage specified in paragraph 10.(a)(9) for failure or breakdown of frost/freeze protection equipment or facilities due to direct damage to such equipment or facilities from an insurable cause of loss. The company questioned how the loss adjuster is to determine: that "direct damage" caused the loss if protection equipment or facilities were not properly maintained; whether the proximate cause of the loss was from

owner negligence or insurable causes, or if from both, how the adjuster makes allowance for contributory negligence; and that the plants are damaged within 72 hours after the failure of the equipment or facilities. For the reasons stated above, it was recommended that paragraph 10.(a)(9) be deleted in its entirety and paragraph 10.(b)(5) be amended to delete the clause "unless due to an insured cause of loss."

*Response:* FCIC disagrees with this comment. The intent of the Nursery Crop Provisions is to protect the producer from unavoidable causes of loss. Therefore, failure or breakdown of the frost/freeze protection equipment or facilities due to an unavoidable insurable cause of loss will be covered. It is the loss adjuster's responsibility to determine whether an insurable cause of loss directly caused the damage in accordance with loss adjustment procedure approved by FCIC.

*Comment:* One comment received from an insurance company stated that because nursery plants are portable, section 11 should require that the insurer's permission to dump be in writing and signed by a loss adjuster and should require the insured to identify, in advance, the location where plants will be dumped and require the insured to keep dumping records.

*Response:* Section 11 requires the insured to obtain written consent from the insurer prior to destroying, selling or otherwise disposing of any plant inventory that is damaged. Further, the Common Crop Insurance Policy Basic Provisions already require the insured to keep records of the disposition of the crop. FCIC will study and address this issue for the 1997 crop year. Therefore, for the reasons stated, FCIC does not believe that it is necessary to amend these provisions.

*Comment:* Two comments were received requesting that insurance be allowed to attach to nursery inventory that produce edible berries, fruits, or nuts as follows:

(1) One comment received from a national trade organization for the nursery industry stated that the production and irrigation practices for nursery plants that are produced as entire plants for subsequent sale to others, where the purchaser's intent is to use the plants to produce edible berries, fruits, and nuts for market are similar to the production and irrigation practices for ornamental plant types. The organization strongly urged FCIC to allow insurance coverage for nursery plants that are produced for the wholesale market as entire plants, and not for berry, fruit, or nut sales; and

(2) One comment received from an FCIC Regional Service Office requested that insurance be allowed to attach to plants that produce edible berries, fruits, or nuts due to numerous requests to insure such plants.

*Response:* FCIC disagrees with these comments. These plants are primarily hardwoods with tap roots. The roots are usually severed or otherwise constricted and stressed when the tree is placed into a container. These trees are usually grafted as well. When stressed, disease can more easily attack these trees through the roots or the graft. Nursery operators cannot assess the quality of the merchandise and may not be aware of the tree condition if the trees are purchased from a supplier, nor can the insurer who accepts the risk. FCIC will study the feasibility of providing insurance on these types of plants for the 1997 crop year. Therefore, FCIC does not believe that it is necessary to amend these provisions at this time.

*Comment:* One comment received from a national trade organization for the nursery industry questioned the reasoning for and disagreed with the proposed clarification that stock plants used for reproduction, growing cuttings, air layering or propagating will not be insured.

*Response:* The intent of the nursery crop insurance policy is to provide coverage for nursery plants that are grown to be sold as entire plants. Premium rates have been established on this basis. Therefore, FCIC does not believe that it is necessary to amend subsection 8.(h).

*Comment:* One comment from a national trade organization for the nursery industry expressed concern regarding the requirement that the insured must report monthly market values of nursery inventory. The organization perceived this as excessively burdensome and, thus, a strong disincentive to the purchase of crop insurance.

*Response:* FCIC agrees that this requirement is time consuming and costly for all parties. However, since indemnity payments are based on the monthly market values, the insured must continue to provide the reports until an alternative method is derived. FCIC will study alternative methods to offer nursery insurance coverage that may eliminate this requirement. Therefore, FCIC does not believe that it is necessary to delay implementation of these provisions at this time.

In addition to the changes indicated in the responses to comments, FCIC has determined that:

1. Subsections 1. (d), (e), (f), and (i), subsection 7.(a) paragraph (3),

subsection 7.(a) paragraph (3), and subsection 12.(a) paragraph (1)(ii) reference the 10% reduced valuation due to the comment above regarding subsection 1.(a). FCIC has amended these provisions accordingly.

2. Subsection 1. (h) and (n), definitions of "Largest dimension" and "Standard nursery containers" is amended to clarify that standard nursery containers must be at least three (3) inches across the largest dimension at the top of the container. This will be consistent with the nursery industry definition of the largest dimension and standard nursery containers.

3. Section 6 is amended to: (1) Allow an insured to revise the Nursery Plant Inventory Summary after the sales closing date to add plants not listed on the Nursery Plant Listing, if the insured requested a written agreement to insure such plants by the sales closing date and it has been offered and accepted; (2) allow the insured to revise the Nursery Plant Inventory Summary to correct or change the value of the insurable inventory if a new plant species is being added which was not originally reported on the nursery plant inventory summary without regard to the 10%/ \$25,000 limitation; and (3) remove the restriction requiring that the increase in inventory value must have been due to a quantity change.

4. Subsection 9.(b) is amended to clarify that the date of final adjustment of a loss on the unit, when the total indemnities paid for the unit equal the amount of insurance for that unit is one of the events that ends the insurance period.

Accordingly, the rule, "Common Crop Insurance Regulations; Nursery Crop Insurance Provisions and Nursery Frost, Freeze, and Cold Damage Exclusion Option" published at 60 FR 5339 as revised and set out below is hereby adopted as final rule.

#### List of Subjects in 7 CFR Part 457

Crop insurance, nursery crop.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1996 and succeeding crop years, to read as follows:

#### PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(1).

2. 7 CFR part 457 is amended by adding §§ 457.114 and 457.115 to read as follows:

#### § 457.114 Nursery Crop Insurance Provisions.

The Nursery Crop Insurance Provisions for the 1996 and succeeding crop years are as follows:

#### United States Department of Agriculture Federal Crop Insurance Corporation

##### Nursery Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

#### 1. Definitions

(a) *Amount of insurance*—The result of multiplying the highest monthly market value reported on the nursery plant inventory summary (including inventory reported by you and accepted by us on a revised nursery plant inventory summary) by .9, multiplied by the percentage for the coverage level you elect.

(b) *Brownout*—A reduction in electric power that affects the unit.

(c) *Crop year*—The 12 month period beginning October 1 and extending through September 30 of the next calendar year, designated by the year in which it ends. (The 1996 crop year begins October 1, 1995, and ends September 30, 1996).

(d) *Crop year loss deductible*—The value calculated by multiplying the highest monthly market value reported on the nursery plant inventory summary by .9 and subtracting from this product the amount of insurance.

(e) *Field market value A*—Ninety percent (90%) of the wholesale market value for the insured plants in the unit immediately prior to the occurrence of the loss.

(f) *Field market value B*—Ninety percent (90%) of the wholesale market value remaining for the insurable plants in the unit immediately following the occurrence of the loss as determined by our appraisal conducted as soon as reasonably possible after the loss is reported.

(g) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to maintain the amount of insurance on the nursery plant inventory.

(h) *Largest dimension*—The distance measured at the top of the standard nursery container from one side directly across to the opposite at the widest point.

(i) *Monthly loss deductible*—The smaller of: (1) The highest monthly market value reported on the nursery plant inventory summary multiplied by .9; or (2) field market value A; multiplied by the number derived by subtracting the coverage level percent from one hundred percent (100%), not to exceed the crop year loss deductible.

(j) *Monthly market value*—The dollar amount determined by multiplying the quantity of each insurable plant by its wholesale market value for that month, less the maximum discount (stated in dollar terms) granted to any buyer, and totalling the resulting values for all insurable plants in the unit.

(k) *Nursery*—A business enterprise that produces ornamental plants in standard nursery containers for the wholesale market.

(l) *Nursery eligible plant listing*—A listing contained in the Actuarial Table that specifies the plants eligible for insurance and any mandatory or recommended storage required for such plants in each hardiness zone defined by the United States Department of Agriculture.

(m) *Nursery plant inventory summary*—A report that specifies the numbers, growing locations, and wholesale prices of plants included in the nursery inventory.

(n) *Standard nursery containers*—Rigid containers not less than three (3) inches across the largest dimension at the top of the container, and which are appropriate in size and with proper drainage holes for the plant contained. Grow bags, trays, cellpacks, and burlap are not standard nursery containers under these crop provisions.

(o) *Stock plants*—Plants used for reproduction, for growing cuttings, for air layering or for propagating.

(p) *Wholesale market value*—The total dollar valuation of the insurable plants actually contained within the unit at any time. The values used will be based on your wholesale price list if properly supported by your records, less the maximum discount (stated in dollar terms) granted to any buyer.

(q) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, plant type and premium rate must be contained in the written agreement. Notwithstanding the sales closing date restriction contained herein, in specific instances, a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the nursery plant inventory, there is a determination that the inventory has the expectancy of meeting the amount of insurance. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved. A written agreement will not be approved for other than standard nursery containers.

## 2. Unit Division

In lieu of the definition of "unit" contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), a unit consists of all growing locations in the county within a five mile radius of the named insured locations designated on your nursery plant inventory summary. Any growing location more than

five miles from any other growing location, but within the county, may be designated as a separate basic unit or be included in the closest unit listed on your nursery plant inventory summary.

## 3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8) are not applicable to the Nursery Crop Provisions.

## 4. Contract Changes

The contract change date is June 30 preceding the crop year (see the provisions of section 4 (Contract Changes) of the Basic Provisions (§ 457.8)).

## 5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are September 30 preceding the crop year.

## 6. Nursery Plant Inventory Summary

(a) Section 6 (Report of Acreage) of the Basic Provisions (§ 457.8) is not applicable to the Nursery Crop Provisions.

(b) You must submit a nursery plant inventory summary to us on or before September 30 preceding the crop year.

(c) The nursery plant inventory summary is a projection of the expected inventory for the following 12 months. This summary must include, by unit and by month for each type of plant in the inventory, the:

- (1) Container sizes, as measured at the largest dimension at the top of the container;
- (2) Number of plants;
- (3) Wholesale price for each month of the crop year; and
- (4) Your share.

If your inventory usually changes within a specific month, report the largest inventory that you expect to have for that month.

(d) Your annual nursery plant inventory summary will be used to determine your premium and the amount of insurance for each unit. If you do not submit the summary by the reporting date, we may elect to determine the nursery plant inventory for each unit or we may deny liability on any unit. Errors in reporting units may be corrected by us at the time of loss adjustment.

(e) Your wholesale price list may be examined to determine whether the prices listed are reasonable. If the prices are determined to be unreasonable, the previous acceptable wholesale price list will be used or we may establish the wholesale price for each type of plant.

(f) With our consent, you may revise your reported nursery plant inventory summary to correct or change the value of the insurable inventory if the amount of the revision is at least ten percent (10%) of the highest monthly market value reported on the nursery plant inventory summary or \$25,000, whichever is smaller, or if a new plant species is being added that was not originally reported on your nursery plant inventory summary or was approved by written

agreement. If you wish to revise the nursery plant inventory summary, you must notify us in writing at least 14 days before a change in inventory value. We must inspect and accept the nursery before insurance attaches on any proposed increase in inventory if:

- (1) The storage facilities have changed in any way since our previous inspection; or
- (2) The revision includes plants that have specific over-wintering storage requirements and that were not previously reported on your nursery plant inventory summary.

(g) You may not revise your nursery plant inventory summary after the sales closing date to add plants not listed on the Nursery Eligible Plant Listing unless a request for a written agreement to add such plants has been submitted by the sales closing date.

(h) Insurable plants that are not reported on your nursery plant inventory summary will not be insured, but the value of such plants after a loss will be included as production to count. Such unreported inventory may reduce the amount of any indemnity payable to you.

(i) You must designate separately any plant inventory that is not insurable.

## 7. Annual Premium

We will determine your premium as follows:

(a) The annual premium for each unit will be calculated by:

(1) Determining the total value of each plant type and container size designated on your nursery plant inventory summary for each month by multiplying the number of plants by the price for that type and container size shown on your accepted wholesale price list for that month, less the maximum discount (stated in dollar terms) granted to any buyer, and totalling the resulting values for each separate classification shown on the actuarial table;

(2) Adding the total values of all plant types and container sizes (determined in (1) above) for each month separately to determine the monthly market values. Then compare the resulting twelve (12) monthly market values to determine the highest monthly market value for the crop year;

(3) Taking the total value of each plant type and container size obtained in (1) above for the month having the highest monthly market value for the crop year (determined in (2) above) for each classification specified in the actuarial table and multiplying these values by .9, then multiplying the results by the percentage coverage level you have elected;

(4) Multiplying each product obtained in (3) above by the appropriate premium rate listed on the actuarial table;

(5) Adding the products obtained in (4) above; and

(6) Multiplying the total obtained in (5) above by your share.

(b) The annual premium will be earned in full when insurance attaches. It is due and payable as follows:

(1) Forty percent (40%) on the later of September 30 preceding each crop year or the date we accept the inventory for insurance;

(2) Thirty percent (30%) on January 1 of the crop year; and

(3) Thirty percent (30%) on April 1 of the crop year.

(c) Additional premium earned from an increase in the nursery plant inventory summary is due and payable when the revised nursery plant inventory summary is approved by us.

(d) Premium will not be reduced due to a decrease in the nursery plant inventory summary, unless such decrease results from the deletion of uninsurable inventory from the summary that was erroneously reported as insurable.

## 8. Insured Plants

In lieu of the provisions of section 8 (Insured Crop) and section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), the insured nursery plant inventory will be all nursery plants in the county reported by you or determined by us for which an application is accepted, a premium rate is provided by the actuarial table, and that:

(a) Are grown under an irrigated practice for which you have adequate facilities and water at the time coverage begins in order to carry out a good irrigation practice;

(b) Are classified as woody, herbaceous, or foliage landscape plants;

(c) Do not include plants that produce edible berries, fruits, or nuts;

(d) Are grown in standard nursery containers;

(e) Are grown in an appropriate growing medium;

(f) Are inspected by us and determined to be acceptable;

(g) Are listed on the Nursery Eligible Plant Listing unless a written agreement provides otherwise;

(h) Are not stock plants;

(i) Are grown in accordance with the production practices for which premium rates have been established; and

(j) Meet the "mandatory" or "recommended" storage requirements, unless you have applied for and received the Frost/Freeze, and Cold Damage Exclusion Option for those nursery plants.

## 9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), coverage begins on each unit or part of a unit the later of October 1 or the date we accept the inventory for insurance, provided you have complied with the terms of paragraph 7.(b)(1). Coverage will not attach for plant inventory added due to a revised nursery plant inventory summary until any additional premium is paid in full. Insurance ends for each unit at the earliest of:

(a) The date all plant inventory within the unit is sold or otherwise removed unless that inventory is replaced and additional earned premium is paid (If a portion of the plants are sold or otherwise removed from inventory, and are not replaced, insurance only ends on that part of the unit.);

(b) The date of final adjustment of a loss on the unit when the total indemnities paid for the unit equal the amount of insurance for that unit; or

(c) September 30 of the crop year.

## 10. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided

for unavoidable damage caused only by the following causes of loss which occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire, except as specified in (b)(4);

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption;

(8) Failure of the irrigation water supply, due to an unavoidable cause of loss occurring within the insurance period; or

(9) Frost or freeze if there is a failure or breakdown of frost/freeze protection equipment or facilities and the failure or breakdown is directly caused by an insurable cause of loss, provided the insured nursery plants are damaged by freezing temperatures within 72 hours after the failure of such equipment or facilities and you establish that repair or replacement was not possible between the time of failure or breakdown and the time the freezing temperatures occurred.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we do not insure against any loss caused by:

(1) Brownout;

(2) Failure of the power supply unless such failure is due to an insurable cause of loss;

(3) The inability to market the nursery plants as a direct result of quarantine, boycott, or refusal of a buyer to accept production;

(4) Fire, where weeds and other forms of undergrowth in the vicinity of the building and on your property have not been controlled; or

(5) Collapse or failure of buildings or structures.

## 11. Duties in the Event of Damage or Loss

In addition to your duties contained under section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must:

(a) Obtain our written consent prior to:

(1) Destroying, selling or otherwise disposing of any plant inventory that is damaged; or

(2) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured plant inventory.

(b) Upon our request, provide complete copies of your nursery plant inventory wholesale price list for the 12 month period immediately preceding the loss and your marketing records including plant shipping invoices for the same period.

(c) Submit a claim for indemnity to us on our form, not later than 60 days after the earliest of:

(1) The date of your loss; or

(2) The end of the insurance period.

## 12. Settlement of Claim

(a) The indemnity will be the amount calculated by us for each unit as follows:

(1) Subtracting field market value B from the lesser of:

(i) Field market value A; or

(ii) The highest monthly market value for the unit reported on the nursery plant inventory summary multiplied by .9;

(2) Subtracting the monthly loss deductible (not to exceed the remaining crop year loss deductible) from the product obtained in (1) above; and

(3) Multiplying the result by your share.

(b) Individual insured losses occurring on the same unit during the crop year may be accumulated if each loss is reported and valued by us to satisfy the crop year loss deductible. Paragraph 12.(a)(2) will not apply to any subsequent individual loss determinations when the total amount of accumulated monthly loss deductibles is equal to or greater than the crop year loss deductible. Total indemnities for a unit will not exceed the amount of insurance for the unit.

(c) The value of any insured plant inventory may be determined on the basis of our appraisals conducted after the end of the insurance period.

## § 457.115 Nursery Frost, Freeze, and Cold Damage Exclusion Option.

This is not a continuous option.

Application for this option must be made on or before the sales closing date for each crop year this Option is to be in effect (see exception in item 2 below).

Insured's Name \_\_\_\_\_

Address \_\_\_\_\_

Contract Number \_\_\_\_\_

Identification Number \_\_\_\_\_

SSN/EIN \_\_\_\_\_

Tax I.D. \_\_\_\_\_

Crop Year \_\_\_\_\_

Unit Number \_\_\_\_\_

Hardiness Zone \_\_\_\_\_

For the crop year designated above, the Nursery Crop Provisions (§ 457.114) are amended in accordance with the following terms and conditions:

1. You must have the Common Crop Insurance Policy Basic Provisions and Nursery Crop Provisions in force.

2. This option must be submitted to us on or before the final date for accepting applications for the crop year in which you wish to insure your nursery plant inventory under this option. If the provisions of paragraph 6.(f)(2) of the Nursery Crop Provisions apply, we may accept this option after the sales closing date, or we may allow additional plants to be added to this option after such date.

3. Executing this option does not reduce the premium rate for nursery crop insurance.

4. All provisions of the Basic Provisions (§ 457.8) and Nursery Crop Provisions (§ 457.114) not in conflict with this option are applicable.

5. Upon execution of this option, the following plant varieties will not have frost, freeze, or cold damage coverage on this unit because the mandatory (Risk Group A) or recommended (Risk Group B) over-wintering requirements will not be met.

| Scientific name | Common name | Over-wintering requirements to be excluded |
|-----------------|-------------|--|
|                 |             |  |

Insured's Signature

Date

Insurance Company Representative's  
Signature and Code Number

Date

Done in Washington, DC, on June 9, 1995.

**Kenneth D. Ackerman,***Manager, Federal Crop Insurance  
Corporation.*

[FR Doc. 95-14710 Filed 6-14-95; 8:45 am]

BILLING CODE 3410-08-P

**FEDERAL ELECTION COMMISSION****11 CFR Parts 104, 110, and 114****[Notice 1995-8]****Repeal of Obsolete Rules****AGENCY:** Federal Election Commission.**ACTION:** Final rule with request for comments.

**SUMMARY:** The Commission is repealing three obsolete provisions of its regulations. The repealed provisions involve contributions to retire pre-1975 debts; certain 1976 payroll deductions for separate segregated funds; and an alternative reporting option for candidates in presidential elections held prior to January 1, 1981.

**DATES:** Comments must be received on or before July 17, 1995. If no adverse comments are received, the rules will be sent to Congress for a 30 legislative day review period pursuant to 2 U.S.C. 438(d) at the close of this comment period. Further action, including the announcement of an effective date, will be taken at the close of the legislative review period. A document announcing the effective date will be published in the **Federal Register**.

**ADDRESSES:** Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, D.C. 20463.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463, (202) 219-3690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is repealing three obsolete

provisions in its rules. All regulate activity that has now been concluded and that cannot recur.

The Commission is issuing these rules as final rules subject to a 30 day public comment period. If no adverse comments are received, the rules will be sent to Congress at the close of this comment period, for a 30 legislative day review period pursuant to 2 U.S.C. 438(d). Further action, including the announcement of an effective date, will take place following this 30 legislative day review period.

If adverse comments are received during the public comment period, the Commission will withdraw these final rules, and publish a Notice of Proposed Rulemaking addressing these issues.

**Explanation and Justification****Part 104—Reports by Political Committees**

Section 104.17 Content of Reports; Presidential and Vice Presidential Committees

The Commission is repealing 11 CFR 104.17, which established alternative filing procedures for authorized committees of candidates for President and Vice President for elections occurring prior to January 1, 1981. The last committees following these procedures were administratively terminated by the Commission on May 25, 1995. No such committees are currently operating under these provisions.

**Part 110—Contribution and Expenditure Limitations and Prohibitions**

Section 110.1 Contributions by Persons Other Than Multicandidate Political Committees

The Commission is repealing 11 CFR 110.1(g), *Contributions to retire pre-1975 debts*. This paragraph exempts contributions made to retire debts resulting from elections held prior to January 1, 1975, from the 11 CFR part 110 contribution limits as long as certain requirements are met. The last committee with pre-1975 debts has resolved these obligations. There are currently no committees registered with the Commission that are paying off pre-1975 election debts.

**Part 114—Corporate and Labor Organization Activity**

Section 114.12 Miscellaneous Provisions

The Commission is repealing 11 CFR 114.12(d). That paragraph allowed a corporation that offered all of its employees a payroll deduction plan prior to May 11, 1976, for contributions

made to the corporation's separate segregated fund to continue to make such deductions for those employees who were not executive or administrative personnel, or stockholders, until December 31, 1976.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]**

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that these rules repeal obsolete provisions of the Commission's rules and thus have no impact on any current activity.

**List of Subjects****11 CFR Part 104**

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

**11 CFR Part 110**

Campaign funds, Political committees and parties.

**11 CFR Part 114**

Business and industry, Elections, Labor.

For reasons set out in the preamble, chapter I of title 11 of the Code of Federal Regulations is amended to read as follows:

**PART 104—REPORTS BY POLITICAL COMMITTEES**

1. The authority citation for part 104 continues to read as follows:

**Authority:** 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b).

**§ 104.17 [Removed]**

2. Section 104.17 is removed.

**PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS**

3. The authority citation for part 110 continues to read as follows:

**Authority:** 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

**§ 110.1 [Amended]**

4. Section 110.1 is amended by removing and reserving paragraph (g).

**PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY**

5. The authority citation for part 114 continues to read as follows:

**Authority:** 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.